

S.J.B., widow of G.W.B., asks the Utah Labor Commission to review Administrative Law Judge George's supplemental decision regarding Mrs. B.'s right to receive survivor's benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

### **BACKGROUND**

On December 24, 1985, the parties to this proceeding stipulated that the Second Injury Fund, now known as the ERF, could reduce Mrs. B.'s survivor's benefits by \$75 per week for five years, commencing August 11, 1988. This reduction was never implemented and Mrs. B. continued to receive the full amount of her survivor's benefits.

ERF discovered the foregoing error and on August 1, 2003, informed Mrs. B. that it intended to reduce the amount of her on-going survivor's benefits by \$100 per week to recoup the amount that should have been deducted in the past. At ERF's request, Judge George issued a supplemental order on September 25, 2003, that authorized ERF's proposed reduction of Mrs. B.'s benefits.

Mrs. B. has now asked the Commission to review this matter. Specifically, Mrs. B. asks that any reduction to her survivor's benefits be limited to "an amount that is in line" with her current income.

### **DISCUSSION AND CONCLUSION OF LAW**

While this is clearly an unfortunate situation, the Commission lacks sufficient information to determine the degree to which all parties share some responsibility for the current state of affairs. Furthermore, although Mrs. B. has requested that her financial situation be considered in determining the amount of offset to be imposed, she has not submitted such information to the Commission. The Commission notes that ERF has offered to reduce the amount of weekly offset in this matter from \$100 to \$75. Under the circumstances, the Commission finds ERF's offer to be reasonable.

### **ORDER**

In light of the foregoing, the Commission modifies paragraph one of Judge George's order, found at page one of his supplemental order dated September 25, 2003, as follows:

**ERF shall pay Stella J. B. death benefits at the rate of \$166 per week commencing on September 23, 2003, and continuing until further order of the Commission.**

It is so ordered.

Dated this 15<sup>th</sup> day of June, 2004.

R. Lee Ellertson, Commissioner